

The Honorable Barbara J. Rothstein

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

D.S.; D.Y. by and through his next friend
JULIE KELLOGG-MORTENSEN; H.A.
by and through his next friend KRISTEN
BISHOPP; and DISABILITY RIGHTS
WASHINGTON, a nonprofit membership
organization for the federally mandated
Protection and Advocacy Systems,

Plaintiffs,

v.

WASHINGTON STATE
DEPARTMENT OF CHILDREN,
YOUTH, AND FAMILIES; and ROSS
HUNTER, in his official capacity as
Secretary of the Washington State
Department of Children, Youth, and
Families,

Defendants.

NO. 2:21-cv-00113-BJR

ORDER GRANTING
PLAINTIFFS' UNOPPOSED
MOTION FOR ORDER
APPROVING ATTORNEYS'
FEES AND COSTS FOLLOWING
MEDIATION

THIS MATTER having come before the Court on Plaintiffs' Unopposed Motion for
Order Approving Attorneys' Fees and Costs Following Mediation, and having been duly
considered, the Court makes the following findings:

1. Plaintiffs filed this class action lawsuit on January 28, 2021, alleging that they and a class of foster children with disabilities were being harmed by Defendants failure to correct systemic deficiencies in Washington State’s child welfare system. Plaintiffs sought declaratory and injunctive relief, alleging that Defendants’ failures violate the rights of foster children with disabilities under United States Constitution, Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12131 *et seq.*, Section 504 of the Rehabilitation Act of 1973 (“Rehabilitation Act”), 29 U.S.C. § 794, and the Adoption Assistance and Child Welfare Act of 1980 (“AACWA”), 42 U.S.C. §§ 621 *et seq.*, 670 *et seq.* ECF No. 1.

2. On June 29, 2021, the Court granted in part Plaintiffs’ motion for a preliminary injunction, which required Defendants to address practices for children in “placement exceptions,” including use of hotel and/or government office. ECF No. 63. Plaintiffs’ Counsel subsequently negotiated with Defendants to stipulate to a class definition, which was certified on September 22, 2021. ECF No. 77.

3. On June 15, 2021, the parties began engaging in mediation. Over the course of the next year, they met over a dozen times and continuously exchanged numerous written proposals and settlement drafts, while also engaging in discovery. These efforts resulted in the Settlement Agreement, which was executed on June 6, 2022, and was granted preliminary approval by the Court on June 24, 2022. ECF No. 97. The Settlement Agreement provides for a comprehensive array of remedies to expand placement options and improve practices to better serve the complex and intersectional needs of the Class and their families.

4. The Settlement Agreement itself affirms “an agreement that attorneys’ fees, costs, and expenses shall be paid to Plaintiffs’ Counsel for the litigation, mediation, and post-

1 settlement monitoring through the date Defendants' obligations under this Agreement
 2 terminate." ECF No. 94-1, at ¶ 56. After the parties negotiated and submitted their Settlement
 3 Agreement for preliminary approval, they mediated on June 21, 2022, and reached an
 4 agreement for Defendants to pay Plaintiffs \$2,150,000.00 for their reasonable attorneys' fees
 5 and costs from case inception to the date this Court enters final approval on the Settlement
 6 Agreement. Plaintiffs represent their actual attorneys' fees and costs, after the exercise of
 7 billing judgment to remove any excess, redundant, or unreasonably duplicative time, and
 8 applying a lodestar, is at least approximately \$2,601,434.30, and their expenses are \$19,258.27
 9 as of July 20, 2022.
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11 5. Plaintiffs have filed an unopposed motion seeking approval of the mediated
 12 total amount of \$2,150,000.00 attorneys' fees and costs. They submit with their motion
 13 detailed time logs and declarations of Plaintiffs' counsel, documentation to support their billing
 14 rates, and records of necessary litigation expenditures. The Court has reviewed these
 15 documents and the summary of the time spent in this litigation. These fees and costs are for
 16 necessary time spent engaging in extensive pre-lawsuit negotiation and investigation; filing the
 17 complaint and obtaining a preliminary injunction, obtaining class certification; conducting
 18 wide-reaching discovery; and mediating extensively with the State of Washington toward the
 19 Settlement Agreement that requires implementation of child welfare reforms across the state.
 20 The litigation costs and expenditures incurred by Plaintiffs' counsel were necessary and are
 21 also fully documented.
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23 6. The Court has reviewed the hourly rates of the attorneys and paralegals that
 24 recorded time in this litigation, which the Court finds to be in line with the hourly rates charged
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1 in the Seattle market for reasonably comparable work performed by attorneys of reasonably
 2 similar skill, experience, and reputation.

3 7. Plaintiffs are the prevailing party and are entitled to their reasonable attorneys'
 4 fees and costs under 42 U.S.C. § 1988. Plaintiffs represent the amount of time expended,
 5 hourly rates requested, and reasonable costs for the covered period results in a potential
 6 lodestar of \$2,620,692,57. The \$2,150,000.000 agreed fee award thus represents
 7 approximately an 18% reduction in the lodestar and costs that might otherwise be recoverable
 8 by Plaintiffs' counsel. Given the scope and complexity of this litigation, the amount of time
 9 expended and documented in the course of representing Plaintiffs in this matter, the hourly
 10 rates Plaintiffs' counsel have requested, the costs Plaintiffs' counsel have incurred and
 11 documented, and the excellent results achieved, the Court finds that, in the absence of any
 12 meritorious objection, the stipulated \$2,150,000.00 attorneys' fees and costs award is fair and
 13 reasonable in this matter and is approved.
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15 8. As indicated on the Notice of Proposed Class Action Settlement, which was
 16 distributed to the Class in accordance with the approved Notice Plan, ECF Nos. 97-100,
 17 Plaintiffs have posted their Unopposed Motion for Approval of Attorneys' Fees and Costs on
 18 the Disability Rights Washington website at [https://www.disabilityrightswa.org/cases/d-s-v-](https://www.disabilityrightswa.org/cases/d-s-v-washington-state-department-of-children-youth-and-families)
 19 [washington-state-department-of-children-youth-and-families](https://www.disabilityrightswa.org/cases/d-s-v-washington-state-department-of-children-youth-and-families) and the National Center for
 20 Youth Law website at <https://youthlaw.org/settlement-ds-v-washington-state-dcyf>. Notice has
 21 been directed to Class Members in a reasonable manner pursuant to Fed. R. Civ. P. 23(h).
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23 Now, therefore, the Court hereby ORDERS as follows: Pursuant to Fed. R. Civ. P.
 24 23(h) and 42 U.S.C. §§ 1988, Plaintiffs' Unopposed Motion for Order Approving Attorneys'
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1 Fees and Costs Following Mediation, is GRANTED, and the parties' agreed upon attorneys'
2 fees and costs award of \$2,150,000.00 to Plaintiffs is approved. Pursuant to their agreement,
3 Defendants shall pay \$2,150,000.00 to Plaintiffs' counsel within thirty (30) days following the
4 entry of this Order.

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6 IT IS SO ORDERED.

7 DATED this 9th day of August, 2022.

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10 BARBARA J. ROTHSTEIN
11 United States District Judge
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